

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 85-0489-RGS

UNITED STATES OF AMERICA

v.

METROPOLITAN DISTRICT COMMISSION, et al.

CIVIL ACTION NO. 83-1614-RGS

CONSERVATION LAW FOUNDATION  
OF NEW ENGLAND, INC.

v.

METROPOLITAN DISTRICT COMMISSION

SCHEDULE SEVEN  
COMPLIANCE ORDER NUMBER 234

January 13, 2015

STEARNS, D.J.

This is the two hundred and thirty-fourth Compliance Order that has issued over the course of this litigation. On December 15, 2014, the Massachusetts Water Resources Authority (MWRA) filed its Quarterly Compliance and Progress Report. The United States and the Conservation Law Foundation subsequently declined to file a response.

## I. Schedule Seven

There were no scheduled activities for the final quarter of 2014 on the Court's Schedule Seven.

### A. Progress Reported

#### 1. Combined Sewer Overflow Program

##### a. Control Gate and Floatables Control at Outfall MWROO3 and Rindge Avenue Siphon Relief

The Notice to Proceed with this \$2.67 million contract for the Gate, Siphon, and Floatables Control at MWR003 CSO Outfall issued on August 28, 2014, in compliance with Schedule Seven. As explained in previous compliance reports and orders, the project is part of the master plan to attain long-term levels of control of CSO discharges into Alewife Brook. Among the improvements contemplated by the contract is the replacement of the existing 30-inch Ridge Avenue siphon with a 48-inch siphon, the installation of an automated gate in place of the static overflow weir at MWR003, and the erection of an underwater baffle to control excess floatables. The contract also contemplates improvements to the Alewife Brook Sewer and the removal of an abandoned sewer line beneath Alewife Brook. The MWRA reports that the contractor is on schedule having completed 12 percent of the anticipated work, consisting to date of technical submissions, site surveys, removal of invasive knotweed, the

cleaning and video inspection of existing sewer pipes, as well as preparatory work on the installation of the 48-inch Ridge Avenue siphon.

b. CAM004 Sewer Separation

The MWRA reports that the City of Cambridge continues to make substantial progress on contracts 8A, 8B, and 9, and will award the contract for sewer separation on Concord Lane by February of 2015. All work on the CAM004 sewer separation project is expected to be completed by December of 2015 in compliance with Schedule Seven. Surface restoration work on the now essentially completed \$17.8 million Contract 8A, which involved the separation of combined sewers in the 68-acre area east of Fresh Pond Parkway, will be completed in June of 2015.

Work on the \$31.2 million Contract 8B, which involves the separation of combined sewers in the 83-acre area between Concord Avenue and Brattle Street, continues to show progress with sewer, drain, and water main work, but scheduling issues persist (attributable primarily to last winter's weather delays in the relocation of NStar gas lines). The MWRA reports that the contractor recovery schedule contemplated in last quarter's report has now been approved by the MWRA and the City of Cambridge along with the associated cost increases. The City's change order #2, which issued in September, re-sequenced the work to allow the completion of

Contract 8B's Milestone 1 (the CSO-related work) by the original milestone date (September 20, 2015), while delaying the completion date of Milestone 2 (the surface restoration work) by 103 days from September of 2016 to December of 2016. NStar has, since September, completed the gas line relocations in the Contract 8B area and the work towards Milestone 1 is 77 percent complete. While the City is confident that progress on Contract 8B will permit completion of the CAM004 project within the parameters of Schedule Seven, the MWRA notes that there is no "float" in the calendar, and that the CSO-related work under Milestone 1 of Contract 8B must be finished on time in September of 2015 to enable the work on Contract 9 to go forward in compliance with Schedule Seven. Both the City and the MWRA will closely monitor progress on Contract 8B in the interim.

The MWRA reports that the \$24.4 million Contract 9, which provides for sewer separation in the 60-acre area extending from Fresh Pond Parkway to the intersection of Concord and Huron Avenues, is now 58 percent complete. If the Contract 8B recovery schedule remains on track, the MWRA and the City expect that the sewer and drain work will be completed by December of 2015, in compliance with Schedule Seven. The surface restoration work in the Contract 9 area is scheduled, in turn, to be completed in August of 2016.

c. Concord Lane

The MWRA reports that the resolution of the dispute with the property owner and the securing of a right of entry (ROE) onto the Concord Lane property behind the Fresh Pond Mall has permitted the completion of the final sewer separation design plan. The City advertised the construction contract for bids on December 10, 2014. The bid opening is now scheduled for January 15, 2015. This construction work along Concord Lane is expected to be completed by the Schedule Seven milestone in December of 2015.

d. Reserved Channel Sewer Separation

On November 12, 2014, the MWRA Board of Directors approved Amendment 15 to the CSO Memorandum of Understanding and Financial Assistance Agreement with the Boston Water and Sewer Commission (BWSC) increasing the MWRA's total contribution to the Reserved Channel sewer separation project by \$3.7 million to a total of \$72.6 million. As previously reported, the BWSC has completed four of the nine contracts that comprise the overall project – the \$4 million Contract 1, the \$5.9 million Contract 2, the \$1.3 million Contract 7, and the \$11.8 million Contract 3A. The \$12.8 million Contract 3B (which involves sewer separation in a 66-acre area of South Boston), is now virtually complete

with only the removal of three drainage connections and punch list work remaining. The \$11.4 million Contract 4 (which involves sewer separation in a 182-acre area), is now approximately 88 percent complete. The installation of sewer and storm drains on L Street and C Street in South Boston was finished during the quarter, while work on East Fourth Street, Athens Street, and M Street is progressing on schedule.

The MWRA additionally reports that work on the \$6.8 million Contract 8 (follow-on pavement restoration] has been suspended for the winter season and will resume in the spring. The \$661,422 Contract 6 involving the disconnection of building downspouts in the Reserved Channel project area was awarded in January of 2014. The notice proceed on Contract 6 was issued by the BWSC on December 8, 2014. Work on Contract 6 is scheduled to be completed by December of 2015. The \$4.8 million Contract 5, which involves the rehabilitation of pre-existing sewers in the Reserved Chanel area, was awarded in February of 2014. Work on Contract 5 is presently suspended for the winter months, but will resume in the spring with final completion anticipated in November of 2015. The MWRA is confident that all work on the Reserved Channel project will be completed by December of 2015, in compliance with Schedule Seven.

e. Storm of December 9, 2014

On December 9, 2014, the Boston area was inundated by 3.5 to 4.8 inches of rain during a nine-hour period. The intensity of the rainfall, coupled with saturated and frozen ground conditions, led to heavy CSO discharges, almost all of which were treated at the MWRA's four CSO treatment facilities. Of special note, the South Boston CSO Storage Tunnel performed to expectations, capturing more than its share of stormwater and preventing any discharges to the beaches in South Boston.

II. Comments

The court is pleased with the consistent progress being made in meeting the deadlines of Schedule 7. The court is confident that the efforts being made by the City of Cambridge, the MWRA, NStar, and the contractor will resolve any difficulties posed by the time constraints on the completion of Contract 8B.

ORDER

The parties are ordered to report to the court as previously scheduled.

SO ORDERED.

/s/ Richard G. Stearns

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UNITED STATES DISTRICT JUDGE

